

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

G&T CONVEYOR COMPANY, INC., a
foreign corporation,

Plaintiff,

v.

ELCON CORPORATION, a Washington
corporation; PORT OF SEATTLE, a
Washington municipal corporation,

Defendants.

C07-987Z

MINUTE ORDER

The following Minute Order is made by direction of the Court, the Honorable Thomas S. Zilly, United States District Judge:

(1) Plaintiff's Motion to Strike Ahlers's Declaration, docket no. 20, is GRANTED IN PART. Paragraph 5 and the last clause of Paragraph 10 (beginning with "in what I can only surmise" and ending with "arbitration demand") of the Declaration of John P. Ahlers, docket no. 7, is hereby STRICKEN. Plaintiff's motion to strike is otherwise DENIED.

(2) Plaintiff's Motion to Strike Declarations, docket no. 26, is GRANTED IN PART. The Declaration of Mark A. Redland, docket no. 23, and the Declaration of Peter S. Williams, docket no. 25, are hereby STRICKEN. Plaintiff's motion to strike is DENIED with respect to the Declaration of Bruce A. Cohen, docket no. 24.

(3) Defendant's Motion to Strike Portions of Berndt's Declaration, docket no. 22 (at 12 n.7), is DENIED.

(4) Defendant's Motion to Dismiss or Stay Pending Arbitration, docket no. 6, is DENIED IN PART. This action will proceed on the sole issue whether the amounts in dispute correspond to the exception in the Settlement Agreement and Release that is described as "CY #162 / GT #5411-0107." If the Court determines that Elcon's claims for

1 delay, impact, and extended overhead costs associated with the C60 project were not
2 released as part of the settlement between G&T Conveyor and Elcon, then the Court will
3 order that such claims be resolved via arbitration pursuant to the original contract between
4 those parties. *See* Exh. 1 to Ahlers Decl., docket no. 7-1 (AIA Document A401-1997
5 Standard Form of Agreement dated June 15, 2004); *see also RMF Nooter, Inc. v. Gleeson*
6 *Constructors, LLC*, 2006 WL 3290126 (W.D. Mich.) (“Before compelling an unwilling party
7 to arbitrate, the court must engage in a limited review to determine whether the dispute is
8 arbitrable; meaning that a valid agreement to arbitrate exists between the parties and that the
9 specific dispute falls within the substantive scope of that agreement.” (quoting *Masco Corp.*
10 *v. Zurich Am. Ins. Co.*, 382 F.3d 624, 627 (6th Cir. 2004))).

11 (5) Plaintiff’s Motion for Partial Summary Judgment, docket no. 18, is DENIED.
12 Genuine issues of material fact exist in this matter concerning whether Elcon’s claims for
13 impact and delay costs associated with the C60 project fall within the exception in the
14 Settlement Agreement and Release that is described as “CY #162 / GT #5411-0107.”

15 (6) Defendant’s Motion Pursuant to Fed. R. Civ. P. 56(f), docket no. 28, and
16 Defendant’s Motion for Protective Order and to Quash Deposition, docket no. 38, are
17 STRICKEN as moot.

18 (7) The Clerk is directed to send a copy of this Minute Order to all counsel of
19 record.

20 Filed and entered this 4th day of September, 2007.

21
22 BRUCE RIFKIN, Clerk

23 s/ Claudia Hawney

24 By _____
25 Claudia Hawney
26 Deputy Clerk